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OFFICE OF PETITIONS

In re Patent No. 6,915,268	:	
Riggs et al.	:	
Issue Date: July 5, 2005	:	DECISION ON REQUEST FOR
Application No. 09/915,301	:	RECONSIDERATION OF
Filed: July 27, 2001	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 6065/1	:	and
	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed July 5, 2005. Patentees request reconsideration of the patent term adjustment indicated in the patent on the basis that the Office took in excess of three years to issue the patent.

The request for reconsideration of the patent term adjustment is GRANTED to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of two hundred ninety-eight (**298**) days.

Patentees are given **TWO (2) MONTHS** from the mailing date of this decision to respond. No extensions of time will be granted under § 1.136.

On prior petition filed February 28, 2005, patentees requested in part that the patent term adjustment be reconsidered on the basis of the Office taking in excess of three years to issue the patent. By decision mailed June 6, 2005, patentees were advised that a decision on that portion of the request was being held in abeyance until after the actual patent date. Patentees were given two (2) months from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years, without payment of an additional fee.

On July 5, 2005, the application matured into U.S. Patent No. 6,915,268, with a revised patent term adjustment of 288 days. On July 5, 2005, patentees timely filed this request that the request on petition filed February 28, 2005 and held in abeyance be decided. Patentees agree that any patent term adjustment should be reduced by 6 days for applicant delay, but in effect, dispute the reduction of 49 days. Patentees request a net patent term extension of up to 337 days due to the failure to issue the patent within 3 years.

It is agreed that the instant patent issued 3 years and 343 days after its filing date. However, if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004). In this instance, the period of delay of 110 and 11 days attributable to grounds specified in § 1.702(a)(1) and (2) overlaps with the 343 days attributable to the delay in the issuance of the patent. Thus, the period of adjustment cannot exceed the actual number of days of delay of 343 days.

Furthermore, patentees submit no basis for concluding that the reduction of 49 days is improper. In view thereof, it is concluded that the periods of reduction of 49 and 6 days at the time of the mailing of the notice of allowance both remain correct.

After the mailing of the notice of allowance, there was no applicant delay warranting entry of further periods of reduction.

In view thereof, the patent should have issued with a revised patent term adjustment of two hundred ninety-eight (298) days (343 - (49 + 6))

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **TWO HUNDRED NINETY-EIGHT (298)** days.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

*Karin Ferriter
for*
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Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction